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AMENDED IN SENATE JULY 9, 1996

AMENDED IN SENATE JUNE 27, 1996

AMENDED IN ASSEMBLY MAY 30, 1996

AMENDED IN ASSEMBLY MAY 9, 1996

AMENDED IN ASSEMBLY APRIL 25, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

## ASSEMBLY BILL

**No. 2937**

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**Introduced by Assembly Members Brulte and Olberg**  
**(Coauthors: Assembly Members Brown, Cannella, Davis,**  
**Gallegos, Katz, Machado, and Villaraigosa)**  
(Principal coauthor: Senator Peace)

February 23, 1996

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An act to amend Section 42400.2 of, and to add and repeal Chapter 3 (commencing with Section 39150) of Part 1 of Division 26 of, the Health and Safety Code, and to amend ~~Section 13387~~ *Sections 13268 and 13387* of, and to add and repeal Chapter 5.8 (commencing with Section 13399) of Division 7 of, the Water Code, relating to pollution enforcement.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2937, as amended, Brulte. Minor violations: air pollution: water quality.

(1) Existing law authorizes the State Air Resources Board, air pollution control and air quality management districts, the State Water Resources Control Board, and the California regional water quality control boards to conduct inspections for violations of law.

This bill would require ~~those boards and districts~~ *the State Air Resources Board and the air pollution control and air quality management districts* to adopt regulations classifying ~~significant violations and~~ minor violations. *The bill would require the State Water Resources Control Board and the regional water quality control boards to determine the types of violations that are minor violations and would require the state water board to adopt regulations or state policy for water quality, as prescribed.* The bill would define the term “notice to comply” and would require a representative of those agencies who, in the course of conducting an inspection, detects a minor violation, to issue a notice to comply, as specified. The bill would prescribe related requirements and procedures.

The bill would require the state air board and state water board to report to the Legislature by January 1, 2000, regarding implementation of the bill. *These provisions would be repealed on January 1, 2001.*

Since the bill would make a false statement of compliance submitted under those procedures a crime pursuant to specified provisions, the bill would impose a state-mandated local program by creating a new crime.

Also, with regard to air pollution control districts and air quality management districts, the bill would impose a state-mandated local program by imposing new requirements upon those local agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 3 (commencing with Section 39150) is added to Part 1 of Division 26 of the Health and Safety Code, to read:

CHAPTER 3. MINOR VIOLATIONS

~~39150. (a) The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for minor violations of this division that will result in a more resource-efficient enforcement mechanism, faster compliance times, and creation of a productive and cooperative working relationship between the state board and the districts and the regulated community.~~

~~(b) —~~

39150. (a) *The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for violations of this division that the enforcement agency finds are minor when the danger they pose to, or the potential that they have for endangering, human health, safety, or welfare or the environment are taken into account.*

(b) *It is the intent of the Legislature in enacting this chapter to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the districts, and the regulated community while maintaining protection of human health and safety and the environment.*

(c) *The state board and each district shall, for their respective jurisdictions, implement this chapter by adopting a regulation or a rule that classifies the types of violations of this division, or of the regulations, rules, standards, orders, permit conditions, or other requirements adopted pursuant to this division, that the state board or the district finds are (1), significant violations and (2), minor violations in accordance with subdivision (d).*

1 ~~(e)~~

2 (d) In classifying the types of violations that are  
3 ~~significant~~ *minor* violations, the state board or the district  
4 shall consider all of the following factors:

5 (1) The magnitude of the violation.

6 (2) The scope of the violation.

7 (3) The severity of the violation.

8 (4) The degree to which a violation puts human  
9 health, safety, or welfare or the environment into  
10 jeopardy.

11 (5) The degree to which a violation could contribute  
12 to the failure to accomplish an important goal or program  
13 objective as established by this division.

14 (6) The degree to which a violation may make it  
15 difficult to determine if the violator is in compliance with  
16 other requirements of this division.

17 ~~(d)~~

18 (e) For purposes of this chapter, a minor violation of  
19 ~~this division is a violation that the state board or a district~~  
20 ~~finds is not a significant violation, except that a minor~~  
21 ~~violation~~ *this division* shall not include any of the  
22 following:

23 (1) Any knowing, willful, or intentional violation of  
24 this division.

25 (2) Any violation of this division that enables the  
26 violator to benefit economically from noncompliance,  
27 either by realizing reduced costs or by gaining a  
28 competitive advantage.

29 (3) Any violation that is a chronic violation or that is  
30 committed by a recalcitrant violator.

31 ~~(e)~~

32 (f) In determining whether a violation is chronic or a  
33 violator is recalcitrant, for purposes of paragraph (3) of  
34 subdivision ~~(d)~~ (e), the state board or district or an  
35 authorized or designated officer shall consider whether  
36 there is evidence indicating that the violator has engaged  
37 in a pattern of neglect or disregard with respect to the  
38 requirements of this division or the requirements  
39 adopted pursuant to this division.

1 39151. For purposes of this chapter, ‘notice to  
2 comply’ means a written method of alleging a minor  
3 violation that is in compliance with all of the following  
4 requirements:

5 (a) The notice to comply is written in the course of  
6 conducting an inspection by an authorized  
7 representative of the state board or district or an  
8 authorized or designated officer. If testing is required by  
9 the state board or district or an authorized or designated  
10 officer to determine compliance, and the testing cannot  
11 be conducted during the course of the inspection, the  
12 representative of the state board or the district or an  
13 authorized or designated officer shall have a reasonable  
14 period of time to conduct the required testing. If, after  
15 the test results are available, the representative of the  
16 state board or district or an authorized or designated  
17 officer determines that the issuance of a notice to comply  
18 is warranted, the representative or officer shall  
19 immediately notify the facility owner or operator in  
20 writing.

21 (b) A copy of the notice to comply is presented to a  
22 person who is an owner, operator, employee, or  
23 representative of the facility being inspected at the time  
24 that the notice to comply is written. If offsite testing is  
25 required pursuant to subdivision (a), a copy of the notice  
26 to comply may be mailed to the owner or operator of the  
27 facility.

28 (c) The notice to comply clearly states the nature of  
29 the alleged minor violation, a means by which  
30 compliance with the requirement cited by the state  
31 board’s or district’s representative or an authorized or  
32 designated officer may be achieved, and a time limit in  
33 which to comply, which shall not exceed 30 days.

34 (d) The notice to comply shall contain the information  
35 specified in subdivision (h) of Section 39152 with regard  
36 to the possible reinspection of the facility.

37 39152. (a) An authorized representative of the state  
38 board or district or an authorized or designated officer,  
39 who, in the course of conducting an inspection, detects a  
40 minor violation shall issue a notice to comply before

1 leaving the site at which the minor violation is alleged to  
2 have occurred if the authorized representative finds that  
3 a notice to comply is warranted.

4 (b) A person who receives a notice to comply pursuant  
5 to subdivision (a) shall have the period specified in the  
6 notice to comply from the date of receipt of the notice to  
7 comply in which to achieve compliance with the  
8 requirement cited on the notice to comply. Within five  
9 working days of achieving compliance, the person who  
10 received the notice to comply shall sign the notice to  
11 comply, ~~under penalty of perjury~~, and return it to the  
12 state board's or district's representative or an authorized  
13 or designated officer, stating that the person has complied  
14 with the notice to comply. A false statement that  
15 compliance has been achieved is a violation of this  
16 division pursuant to Section 42400.2 *or* 42402.2.

17 (c) A single notice to comply shall be issued for all  
18 minor violations cited during the same inspection and the  
19 notice to comply shall separately list each cited minor  
20 violation and the manner in which each minor violation  
21 may be brought into compliance.

22 (d) A notice to comply shall not be issued for any  
23 minor violation that is corrected immediately in the  
24 presence of the inspector. Immediate compliance in that  
25 manner may be noted in the inspection report, but the  
26 person shall not be subject to any further action by the  
27 state board's or district's representative or an authorized  
28 or designated officer.

29 (e) Except as otherwise provided in subdivision (g), a  
30 notice to comply shall be the only means by which the  
31 state board's or district's representative or an authorized  
32 or designated officer shall cite a minor violation. The state  
33 board's or district's representative or an authorized or  
34 designated officer shall not take any other enforcement  
35 action specified in this division to enforce the minor  
36 violation against a person who has received a notice to  
37 comply if the person is in compliance with this section.

38 (f) If a person who receives a notice to comply  
39 pursuant to subdivision (a) disagrees with one or more of  
40 the alleged violations cited in the notice to comply, the

1 person shall give written notice of appeal to the state  
2 board or district, which shall develop a process for  
3 reviewing and determining the disposition of the appeal.

4 (g) Notwithstanding any other provision of this  
5 section, if a person fails to comply with a notice to comply  
6 within the prescribed period, or if the state board or  
7 district or an authorized or designated officer determines  
8 that the circumstances surrounding a particular minor  
9 violation are such that immediate enforcement is  
10 warranted to prevent harm to the public health or safety  
11 or to the environment, the state board or district or an  
12 authorized or designated officer may take any needed  
13 enforcement action authorized by this division.

14 (h) A notice to comply issued to a person pursuant to  
15 this section shall contain a statement that the inspected  
16 facility may be subject to reinspection at any time.  
17 Nothing in this section shall be construed as preventing  
18 the reinspection of a facility to ensure compliance or to  
19 ensure that minor violations cited in a notice to comply  
20 have been corrected.

21 (i) Nothing in this section shall be construed as  
22 preventing the state board or district or an authorized or  
23 designated officer, on a case-by-case basis, from requiring  
24 a person subject to a notice to comply to submit  
25 reasonable and necessary documentation to support a  
26 claim of compliance by the person.

27 (j) Nothing in this section restricts the power of a city  
28 attorney, district attorney, county counsel, or the  
29 Attorney General to bring, in the name of the people of  
30 California, any criminal proceeding otherwise authorized  
31 by law. Furthermore, nothing in this section prevents the  
32 state board or district, or any representative of the state  
33 board or district, from cooperating with, or participating  
34 in, such a proceeding.

35 (k) Notwithstanding any other provision of this  
36 section, if the state board or district or an authorized or  
37 designated officer determines that the circumstances  
38 surrounding a particular minor violation are such that the  
39 assessment of a civil penalty pursuant to this division is  
40 warranted or required by federal law, in addition to

1 issuance of a notice to comply, the state board or district  
2 or an authorized or designated officer shall assess ~~that a~~  
3 civil penalty in accordance with this division, if the state  
4 board or district or an authorized or designated officer  
5 makes written findings that set forth the basis for the  
6 determination of the state board or district.

7 39153. (a) On or before January 1, 2000, the state  
8 board shall report to the Legislature on actions taken by  
9 the state board and the districts to implement this  
10 chapter and the results of that implementation. Each  
11 district shall provide the state board with the information  
12 that the state board requests to determine the degree to  
13 which the purposes described in subdivision (a) of  
14 Section 39150 have been achieved.

15 (b) This chapter shall remain in effect only until  
16 January 1, 2001, and as of that date is repealed, unless a  
17 later enacted statute, which is enacted on or before  
18 January 1, 2001, deletes or extends that date.

19 SEC. 2. Section 42400.2 of the Health and Safety Code  
20 is amended to read:

21 42400.2. (a) Any person who emits an air  
22 contaminant in violation of any provision of this part, or  
23 any order, rule, regulation, or permit of the state board  
24 or of a district pertaining to emission regulations or  
25 limitations, and who knew of the emission and failed to  
26 take corrective action within a reasonable period of time  
27 under the circumstances, is guilty of a misdemeanor and  
28 is subject to a fine of not more than twenty-five thousand  
29 dollars (\$25,000) or imprisonment in the county jail for  
30 not more than one year, or both.

31 (b) For purposes of this section, "corrective action"  
32 means the termination of the emission violation or the  
33 grant of a variance from the applicable order, rule,  
34 regulation, or permit pursuant to Article 2 (commencing  
35 with Section 42350). If a district regulation regarding  
36 process upsets or equipment breakdowns would allow  
37 continued operation of equipment which is emitting air  
38 contaminants in excess of allowable limits, compliance  
39 with that regulation is deemed to be corrective action.



(c) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, notice to comply, or order of the state board or of a district, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(d) (1) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury to the health or safety of a considerable number of persons or the public, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(2) As used in this subdivision, “actual injury” means any physical injury which, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(e) Each day during any portion of which a violation occurs constitutes a separate offense.

(f) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

SEC. 3. *Section 13268 of the Water Code is amended to read:*

13268. (a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, *or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2*, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a

1 violation of subdivision (a) in an amount which shall not  
2 exceed one thousand dollars (\$1,000) for each day in  
3 which the violation occurs.

4 (2) Civil liability may be imposed by the superior court  
5 in accordance with ~~Articles~~ *Article* 5 (commencing with  
6 Section 13350) and *Article* 6 (commencing with Section  
7 13360) of Chapter 5 for a violation of subdivision (a) in an  
8 amount which shall not exceed five thousand dollars  
9 (\$5,000) for each day in which the violation occurs.

10 (c) Any person discharging hazardous waste, as  
11 defined in Section 25117 of the Health and Safety Code,  
12 knowingly failing or refusing to furnish technical or  
13 monitoring program reports as required by subdivision  
14 (b) of Section 13267, or knowingly falsifying any  
15 information provided therein, is guilty of a misdemeanor  
16 and may be civilly liable in accordance with subdivision  
17 (d).

18 This subdivision shall not be applicable to any waste  
19 discharge which is subject to Chapter 5.5 (commencing  
20 with Section 13370).

21 (d) (1) Civil liability may be administratively  
22 imposed by a regional board in accordance with Article  
23 2.5 (commencing with Section 13323) of Chapter 5 for a  
24 violation of subdivision (c) in an amount which shall not  
25 exceed five thousand dollars (\$5,000) for each day in  
26 which the violation occurs.

27 (2) Civil liability may be imposed by the superior court  
28 in accordance with ~~Articles~~ *Article* 5 (commencing with  
29 Section 13350) and *Article* 6 (commencing with Section  
30 13360) of Chapter 5 for a violation of subdivision (c) in an  
31 amount which shall not exceed twenty-five thousand  
32 dollars (\$25,000) for each day in which the violation  
33 occurs.

34 *SEC. 4.* Chapter 5.8 (commencing with Section  
35 13399) is added to Division 7 of the Water Code, to read:

36  
37 CHAPTER 5.8. MINOR VIOLATIONS  
38

39 ~~13399. (a) The Legislature hereby finds and declares~~  
40 ~~that the purpose of this chapter is to establish an~~

1 ~~enforcement policy for minor violations of this division~~  
2 ~~that will result in a more resource-efficient enforcement~~  
3 ~~mechanism, faster compliance times, and creation of a~~  
4 ~~productive and cooperative working relationship~~  
5 ~~between the state board and the regional boards and the~~  
6 ~~regulated community. This chapter applies solely to the~~  
7 ~~actions of the state board and the regional boards in~~  
8 ~~administering this division and has no application to the~~  
9 ~~administrative or enforcement actions of other public~~  
10 ~~agencies.~~

11 ~~(b) The state board and each regional board shall~~  
12 ~~implement this chapter by adopting a regulation or a rule~~  
13 ~~that classifies the types of violations of this division, or of~~  
14 ~~the regulations, rules, standards, orders, permit~~  
15 ~~conditions, or other requirements adopted pursuant to~~  
16 ~~this division, that the state board or the regional board~~  
17 ~~finds are (1), significant violations and (2), minor~~  
18 ~~violations in accordance with subdivision (d).~~

19 ~~(c) In establishing the types of violations that are~~  
20 ~~significant violations the state board or the regional board~~  
21 ~~shall consider all of the following factors:~~

22 *13399. (a) The Legislature hereby finds and declares*  
23 *that the purpose of this chapter is to establish an*  
24 *enforcement policy for violations of this division that the*  
25 *enforcement agency finds are minor when the danger*  
26 *they pose to, or the potential that they have for*  
27 *endangering, human health, safety, or welfare or the*  
28 *environment are taken into account.*

29 *(b) It is the intent of the Legislature in enacting this*  
30 *chapter to provide a more resource-efficient*  
31 *enforcement mechanism, faster compliance times, and*  
32 *the creation of a productive and cooperative working*  
33 *relationship between the state board, the regional boards,*  
34 *and the regulated community while maintaining*  
35 *protection of human health and safety and the*  
36 *environment.*

37 *(c) This chapter applies solely to the actions of the*  
38 *state board and the regional boards in administering this*  
39 *division and has no application to the administrative*  
40 *enforcement actions of other public agencies.*

1 (d) The state board and each regional board shall  
2 implement this chapter by determining the types of  
3 violations of this division, or of the regulations, rules,  
4 standards, orders, permit conditions, or other  
5 requirements adopted pursuant to this division that the  
6 state board or the regional board finds are minor  
7 violations in accordance with subdivisions (e) and (f).  
8 The state board shall implement this chapter through  
9 adoption of regulations or state policy for water quality  
10 control pursuant to Article 3 (commencing with Section  
11 13140) of Chapter 3.

12 (e) In determining the types of violations that are  
13 minor violations, the state board or regional board shall  
14 consider all of the following factors:

15 (1) The magnitude of the violation.

16 (2) The scope of the violation.

17 (3) The severity of the violation.

18 (4) The degree to which a violation puts human  
19 health, safety, or welfare or the environment into  
20 jeopardy.

21 (5) The degree to which a violation could contribute  
22 to the failure to accomplish an important goal or program  
23 objective as established by this division.

24 (6) The degree to which a violation may make it  
25 difficult to determine if the violator is in compliance with  
26 other requirements of this division.

27 ~~(d)~~

28 (f) For purposes of this chapter, a minor violation of  
29 ~~this division is a violation that the state board or the~~  
30 ~~regional board finds is not a significant violation, except~~  
31 ~~that a minor violation~~ this division shall not include any  
32 of the following:

33 (1) Any knowing, willful, or intentional violation of  
34 this division.

35 (2) Any violation of this division that enables the  
36 violator to benefit economically from noncompliance,  
37 either by realizing reduced costs or by gaining a  
38 competitive advantage.

39 (3) Any violation that is a chronic violation or that is  
40 committed by a recalcitrant violator.

1 ~~(e)~~

2 (g) In determining whether a violation is chronic or a  
3 violator is recalcitrant, for purposes of paragraph (3) of  
4 subdivision ~~(d)~~ (f), the state board or regional board shall  
5 consider whether there is evidence indicating that the  
6 violator has engaged in a pattern of neglect or disregard  
7 with respect to the requirements of this division or the  
8 requirements adopted pursuant to this division.

9 13399.1. For purposes of this chapter, ‘notice to  
10 comply’ means a written method of alleging a minor  
11 violation that is in compliance with all of the following  
12 requirements:

13 (a) The notice to comply is written in the course of  
14 conducting an inspection by an authorized  
15 representative of the state board or regional board. If  
16 testing is required by the state board or regional board to  
17 determine compliance, and the testing cannot be  
18 conducted during the course of the inspection, the  
19 representative of the state board or regional board shall  
20 have a reasonable period of time to conduct the required  
21 testing. If, after the test results are available, the  
22 representative of the state board or regional board  
23 determines that the issuance of a notice to comply is  
24 warranted, the representative shall immediately notify  
25 the facility owner or operator in writing.

26 (b) A copy of the notice to comply is presented to a  
27 person who is an owner, operator, employee, or  
28 representative of the facility being inspected at the time  
29 that the notice to comply is written. If offsite testing is  
30 required pursuant to subdivision (a), a copy of the notice  
31 to comply may be mailed to the owner or operator of the  
32 facility.

33 (c) The notice to comply clearly states the nature of  
34 the alleged minor violation, a means by which  
35 compliance with the requirement cited by the  
36 representative of the state board or regional board may be  
37 achieved, and a time limit in which to comply, which shall  
38 not exceed 30 days.

(d) The notice to comply shall contain the information specified in subdivision (h) of Section 13399.2 with regard to the possible reinspection of the facility.

13399.2. (a) An authorized representative of the state board or regional board, who, in the course of conducting an inspection, detects a minor violation shall issue a notice to comply before leaving the site at which the minor violation is alleged to have occurred if the authorized representative finds that a notice to comply is warranted.

(b) A person who receives a notice to comply pursuant to subdivision (a) shall have the period specified in the notice to comply from the date of receipt of the notice to comply in which to achieve compliance with the requirement cited on the notice to comply. Within five working days of achieving compliance, the person who received the notice to comply shall sign the notice to comply, and return it to the representative of the state board or regional board, stating that the person has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this ~~division pursuant to subdivision (e) of Section 13387.~~ *division pursuant to subdivision (a) of Section 13268, Section 13385, or subdivision (e) of Section 13387.*

(c) A single notice to comply shall be issued for all minor violations cited during the same inspection and the notice to comply shall separately list each cited minor violation and the manner in which each minor violation may be brought into compliance.

(d) A notice to comply shall not be issued for any minor violation that is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report, but the person shall not be subject to any further action by the representative of the state board or regional board.

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the representative of the state board or regional board shall cite a minor violation. The representative of the state board or regional board shall not take any other

1 enforcement action specified in this division against a  
2 person who has received a notice to comply if the person  
3 is in compliance with this section.

4 (f) If a person who receives a notice to comply  
5 pursuant to subdivision (a) disagrees with one or more of  
6 the alleged violations cited in the notice to comply, the  
7 person shall give written notice of appeal to the state  
8 board or regional board.

9 (g) Notwithstanding any other provision of this  
10 section, if a person fails to comply with a notice to comply  
11 within the prescribed period, or if the state board or  
12 regional board determines that the circumstances  
13 surrounding a particular minor violation are such that  
14 immediate enforcement is warranted to prevent harm to  
15 the public health or safety or to the environment, the  
16 state board or regional board may take any needed  
17 enforcement action authorized by this division.

18 (h) A notice to comply issued to a person pursuant to  
19 this section shall contain a statement that the inspected  
20 facility may be subject to reinspection at any time.  
21 Nothing in this section shall be construed as preventing  
22 the reinspection of a facility to ensure compliance or to  
23 ensure that minor violations cited in a notice to comply  
24 have been corrected.

25 (i) Nothing in this section shall be construed as  
26 preventing the state board or regional board, on a  
27 case-by-case basis, from requiring a person subject to a  
28 notice to comply to submit reasonable and necessary  
29 documentation to support a claim of compliance by the  
30 person.

31 j)

32 (j) Nothing in this section restricts the power of a city  
33 attorney, district attorney, county counsel, or the  
34 Attorney General to bring, in the name of the people of  
35 California, any criminal proceeding otherwise authorized  
36 by law. Furthermore, nothing in this section prevents the  
37 state board or regional board, or a representative of the  
38 state board or regional board, from cooperating with, or  
39 participating in, such a proceeding.

1 (k) Notwithstanding any other provision of this  
2 section, if the state board or regional board determines  
3 that the circumstances surrounding a particular minor  
4 violation are such that the assessment of a civil penalty  
5 pursuant to this division is warranted or required by  
6 federal law, in addition to issuance of a notice to comply,  
7 the state board or regional board shall assess ~~that~~ a civil  
8 penalty in accordance with this division, if the state board  
9 or regional board makes written findings that set forth the  
10 basis for the determination of the state board or regional  
11 board.

12 13399.3. (a) On or before January 1, 2000, the state  
13 board shall report to the Legislature on actions taken by  
14 the state board and the regional boards to implement this  
15 chapter and the results of that implementation. Each  
16 regional board shall provide the state board with the  
17 information that the state board requests to determine  
18 the degree to which the purposes described in subdivision  
19 (a) of Section 13399 have been achieved.

20 (b) This chapter shall remain in effect only until  
21 January 1, 2001, and as of that date is repealed, unless a  
22 later enacted on or statute, which is enacted on or before  
23 January 1, 2001, deletes or extends that date.

24 ~~SEC. 4.~~

25 SEC. 5. Section 13387 of the Water Code is amended  
26 to read:

27 13387. (a) Any person who intentionally or  
28 negligently does any of the following is subject to criminal  
29 penalties as provided in subdivisions (b), (c), and (d):

30 (1) Violates Section 13375 or 13376.

31 (2) Violates any waste discharge requirements or  
32 dredged or fill material permit.

33 (3) Violates any order or prohibition issued pursuant  
34 to Section 13243 or 13301, if the activity subject to the  
35 order or prohibition is subject to regulation under this  
36 chapter.

37 (4) Violates any requirement of Section 301, 302, 306,  
38 307, 308, 318, or 405 of the Federal Water Pollution  
39 Control Act, as amended.



1 (5) Introduces into a sewer system or into a publicly  
2 owned treatment works any pollutant or hazardous  
3 substances which the person knew or reasonably should  
4 have known could cause personal injury or property  
5 damage.

6 (6) Introduces any pollutant or hazardous substance  
7 into a sewer system or into a publicly owned treatment  
8 works, except in accordance with any applicable  
9 pretreatment requirements, which pollutant or  
10 hazardous substance causes the treatment works to  
11 violate waste discharge requirements.

12 (b) Any person who negligently commits any of the  
13 violations set forth in subdivision (a) shall, upon  
14 conviction, be punished by a fine of not less than five  
15 thousand dollars (\$5,000), nor more than twenty-five  
16 thousand dollars (\$25,000), for each day in which the  
17 violation occurs, or by imprisonment for not more than  
18 one year in the county jail, or both. If a conviction of a  
19 person is for a violation committed after a first conviction  
20 of the person under this subdivision, subdivision (c), or  
21 subdivision (d), punishment shall be by a fine of not more  
22 than fifty thousand dollars (\$50,000) for each day in which  
23 the violation occurs, or by imprisonment of not more than  
24 two years, or by both.

25 (c) Any person who knowingly commits any of the  
26 violations set forth in subdivision (a) shall, upon  
27 conviction, be punished by a fine of not less than five  
28 thousand dollars (\$5,000), nor more than fifty thousand  
29 dollars (\$50,000), for each day in which the violation  
30 occurs, or by imprisonment for not more than three years,  
31 or by both. If a conviction of a person is for a violation  
32 committed after a first conviction of the person under this  
33 subdivision or subdivision (d), punishment shall be by a  
34 fine of not more than one hundred thousand dollars  
35 (\$100,000) for each day in which the violation occurs, or  
36 by imprisonment of not more than six years, or by both.

37 (d) (1) Any person who knowingly commits any of  
38 the violations set forth in subdivision (a), and who knows  
39 at the time that the person thereby places another person  
40 in imminent danger of death or serious bodily injury,

1 shall, upon conviction, be subject to a fine of not more  
2 than two hundred fifty thousand dollars (\$250,000) or  
3 imprisonment of not more than 15 years, or both. A  
4 person which is an organization shall, upon conviction  
5 under this subdivision, be subject to a fine of not more  
6 than one million dollars (\$1,000,000). If a conviction of a  
7 person is for a violation committed after a first conviction  
8 of the person under this subdivision, the maximum  
9 punishment shall be a fine of not more than five hundred  
10 thousand dollars (\$500,000) or imprisonment of not more  
11 than 30 years, or both. A person which is an organization  
12 shall, upon conviction for a violation committed after a  
13 first conviction of the person under this subdivision, be  
14 subject to a fine of not more than two million dollars  
15 (\$2,000,000). Any fines imposed pursuant to this  
16 subdivision shall be in addition to any fines imposed  
17 pursuant to subdivision (c).

18 (2) In determining whether a defendant who is an  
19 individual knew that the defendant's conduct placed  
20 another person in imminent danger of death or serious  
21 bodily injury, the defendant is responsible only for actual  
22 awareness or actual belief that the defendant possessed,  
23 and knowledge possessed by a person other than the  
24 defendant, but not by the defendant personally, cannot  
25 be attributed to the defendant.

26 (e) Any person who knowingly makes any false  
27 statement, representation, or certification in any record,  
28 report, plan, notice to comply, or other document filed  
29 with a regional board or the state board, or who  
30 knowingly falsifies, tampers with, or renders inaccurate  
31 any monitoring device or method required under this  
32 division shall be punished by a fine of not more than  
33 twenty-five thousand dollars (\$25,000), or by  
34 imprisonment for not more than two years, or by both. If  
35 a conviction of a person is for a violation committed after  
36 a first conviction of the person under this subdivision,  
37 punishment shall be by a fine of not more than  
38 twenty-five thousand dollars (\$25,000) per day of  
39 violation, or by imprisonment of not more than four years,  
40 or by both.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, “organization,” “serious bodily injury,” “person,” and “hazardous substance” shall have the same meaning as in Section 309(c) of the Federal Water Pollution Control Act, as amended.

(h) Funds collected pursuant to this section shall be paid to the State Water Pollution Cleanup and Abatement Account.

~~SEC. 5.~~

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district will be incurred because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Moreover no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain other costs because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.